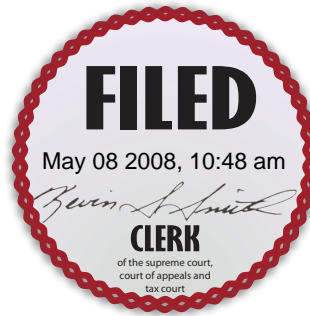


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DWAYNE ELLINGTON, JR.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 89A05-0709-CR-543

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable P. Thomas Snow, Judge
Cause No. 89D01-0605-FB-10

May 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Dwayne Ellington, Jr. appeals his conviction for Class B felony robbery. We affirm.

Issue

Ellington raises one issue, which we restate as whether his conviction is supported by sufficient evidence.

Facts

The facts most favorable to the judgment show that on May 16, 2006, Suhash Patel (“Sam”) was working at the front counter of a Days Inn in Richmond when Ellington approached him and inquired about the price of a room. After receiving a quote from Sam, Ellington left the hotel. Ellington returned to the front desk approximately fifteen minutes later and requested a room. Sam proceeded to enter information for the reservation into the computer. As Sam was entering this information, Ellington leapt over the front desk, pushed Sam to the floor, brandished a knife, and demanded money. After Sam pointed to the cash register, Ellington opened it and grabbed approximately \$250. Being unable to find any money under the cash register, Ellington asked Patel, “Where’s the rest of the money or I’ll shoot you” while still brandishing a knife. Tr. p. 145. Sam replied that there was no additional money and Ellington left the hotel. Sam remembered that Ellington was wearing a white ball cap and white shirt when the robbery took place.

Hesmukh Patel (“Harry”), another employee at the hotel, was outside checking the mail during the robbery and noticed a maroon car with a black front-bra running in the

parking lot. While Harry was walking back inside he heard Sam calling for him. Harry next saw a man run out of the hotel. Sam got up after Ellington ran out of the hotel and followed him in order to get Ellington's description. When Sam reached the lobby's window he noticed someone he believed to be Ellington already sitting in the driver's seat of the Maroon car but now wearing a black shirt with no ball cap. After watching the car, a Saturn, drive away, Sam called the police. Richmond police officers responded to the scene and Sam described the robber as a "black male about 5'4" or 5'6" in height, skinny, really dark black, wearing black pants and a white tee shirt when he robbed me and I... that was my understanding is [sic] he changed or put on another after he left." Tr. p. 180.

While interviewing Sam, the Richmond police officers received a call from the Ohio State Police stating that they had pulled over a vehicle matching Sam's description about 18 miles within Ohio. Bryan Ogle was the driver of this vehicle and Ellington was the passenger. The Ohio State Police searched the vehicle and found a white tee shirt, white ball cap, and knife in the back. An officer asked Ellington how much money he had on him and Ellington replied that he had none. During a search of Ellington, a "bulk amount of money" in the amount of \$247 was found in Ellington's pants along with a Days Inn business card.

About an hour after the robbery, the Richmond police officers drove Sam and Harry to Ohio for a "show up" identification of Ogle and Ellington. Both Sam and Harry "reacted" when Ogle, who was wearing a black shirt, was shown to them approximately 35 feet away. Tr. p. 247. Ellington, wearing a white shirt, was next shown to Sam and

Harry from approximately the same distance and Sam identified him as the actual robber. Sam made a statement two hours after the robbery to a detective stating that he was “99% sure” that the man in the black tee shirt driving away from the scene was the one that had robbed him even though he had previously described the robber as wearing a white shirt. Tr. p. 169.

On May 17, 2006, the State charged Ellington with one count of robbery. A jury found Ellington guilty of Class B felony robbery. Ellington now appeals.

Argument

Ellington argues that there was insufficient evidence to sustain his conviction because of supposed conflicting and inconclusive eyewitness identification. We disagree. Our standard of review for sufficiency of the evidence claims is well settled. When reviewing the sufficiency of the evidence supporting a conviction, we will not reweigh the evidence or judge the credibility of witnesses. Staton v. State, 853 N.E.2d 470, 474 (Ind. 2006). We must look to the evidence most favorable to the conviction together with all reasonable inferences to be drawn from that evidence. Id. We will affirm a conviction if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

Ellington claims that Sam’s identification of Ellington could not support a conclusion of guilt beyond a reasonable doubt. Eyewitness identification by a single witness is sufficient to support a conviction of robbery. Stowers v. State, 657 N.E.2d 194, 200 (Ind. Ct. App. 1995), trans. denied. Any inconsistencies in identification

testimony go only to the weight of that testimony, as it is the task of the jury to weigh the evidence and determine the credibility of the witnesses. Badelle v. State, 754 N.E.2d 510, 543 (Ind. Ct. App. 2001) (citing Emerson v. State, 724 N.E.2d 605, 609-10 (Ind. 2000)), trans. denied.

Ellington directs our attention to the discrepancies from Sam regarding the description of the robber. Sam first stated that a man wearing a white shirt robbed him. Sam then saw a single man wearing a black shirt whom he believed to be Ellington driving away from the Days Inn immediately after the robbery. During the “show up” identification on the Ohio interstate Sam identified Ellington, who was then wearing a white shirt, as the robber. However, Sam made a statement two hours after the robbery to a detective that he was “99% sure” that a man with a black shirt had robbed him. Tr. p. 169. When Sam was testifying during trial he was “100% sure” that the defendant sitting in front of him, Ellington, committed the robbery. Tr. p. 152.

We believe there was sufficient evidence to substantiate Sam’s identification of Ellington. Ogle, the driver of the vehicle, testified during trial that Ellington was crouched in the passenger seat immediately before they pulled away from the Days Inn. It was reasonable for Sam to accidentally believe that the driver was Ellington. Furthermore, Sam’s resolute identification of Ellington as the robber during trial provided the jury with additional evidence supporting Sam’s proper identification of Ellington.

The circumstantial evidence against Ellington especially supports the conviction. In particular, the search on the interstate uncovered nearly the exact amount of money taken from the Days Inn and a business card from the front desk hidden in his pants. The

jury could reasonably conclude that Sam's identification of Ellington and the existence of robust circumstantial evidence provided sufficient evidence to convict Ellington.

Conclusion

There is sufficient evidence to support Ellington's conviction for robbery. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.